

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 769

Introduced by Assembly Member Jerome Horton

February 18, 2005

An act to ~~add Section 17980.12~~ *amend Section 17980.7* of the Health and Safety Code, relating to residential real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 769, as amended, Jerome Horton. ~~Residential Real Property~~ *real property*.

The State Housing Law requires the housing or building department or, if there is no building department, the health department, of every city, county, or city and county, or a specified environmental agency to enforce within its jurisdiction all of the State Housing Law, the building standards published in the State Building Standards Code, and other specified rules and regulations. If there is a violation of these provisions or any order or notice that gives a reasonable time to correct that violation, or if a nuisance exists, an enforcement agency is required, after 30 days' notice to abate the nuisance, to institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance. *If the owner fails to comply within a reasonable time with the terms of an order or notice, existing law authorizes, among other things, the enforcement agency to seek and the court to order imposition of specified penalties or the enforcement agency, tenant, or tenant association or organization to seek and the court to order the appointment of a receiver for a substandard building.*

This bill would, on and after July 1, 2006, authorize an enforcement agency to require an owner of residential rental property to

successfully complete 15 hours of educational courses, seminars, or workshops that are approved by the Department of Real Estate *or the enforcement agency*, as specified, if he or she fails to comply within a reasonable time with the terms of an order or notice to repair or abate a building condition that is in violation of a housing or building standard to an extent that the health and safety of the residents or the public is substantially endangered.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 17980.12 is added to the Health and~~
2 ~~Safety Code, to read:~~

3 ~~SECTION 1. Section 17980.7 of the Health and Safety Code~~
4 ~~is amended to read:~~

5 17980.7. If the owner fails to comply within a reasonable
6 time with the terms of the order or notice issued pursuant to
7 Section 17980.6, the following provisions shall apply:

8 (a) The enforcement agency may seek and the court may order
9 imposition of the penalties provided for under Chapter 6
10 (commencing with Section 17995).

11 (b) (1) The enforcement agency may seek and the court may
12 order the owner to not claim any deduction with respect to state
13 taxes for interest, taxes, expenses, depreciation, or amortization
14 paid or incurred with respect to the cited structure, in the taxable
15 year of the initial order or notice, in lieu of the enforcement
16 agency processing a violation in accordance with Sections 17274
17 and 24436.5 of the Revenue and Taxation Code.

18 (2) If the owner fails to comply with the terms of the order or
19 notice to correct the condition that caused the violation pursuant
20 to Section 17980.6, the court may order the owner to not claim
21 these tax benefits for the following year.

22 (c) The enforcement agency, tenant, or tenant association or
23 organization may seek and the court may order, the appointment
24 of a receiver for the substandard building pursuant to this
25 subdivision. In its petition to the court, the enforcement agency,
26 tenant, or tenant association or organization shall include proof
27 that notice of the petition was served not less than three days
28 prior to filing the petition, pursuant to Article 3 (commencing

1 with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code
2 of Civil Procedure, to all persons with a recorded interest in the
3 real property upon which the substandard building exists.

4 (1) In appointing a receiver, the court shall consider whether
5 the owner has been afforded a reasonable opportunity to correct
6 the conditions cited in the notice of violation.

7 (2) The court shall not appoint any person as a receiver unless
8 the person has demonstrated to the court his or her capacity and
9 expertise to develop and supervise a viable financial and
10 construction plan for the satisfactory rehabilitation of the
11 building. A court may appoint as a receiver a nonprofit
12 organization or community development corporation. In addition
13 to the duties and powers that may be granted pursuant to this
14 section, the nonprofit organization or community development
15 corporation may also apply for grants to assist in the
16 rehabilitation of the building.

17 (3) If a receiver is appointed, the owner and his or her agent of
18 the substandard building shall be enjoined from collecting rents
19 from the tenants, interfering with the receiver in the operation of
20 the substandard building, and encumbering or transferring the
21 substandard building or real property upon which the building is
22 situated.

23 (4) Any receiver appointed pursuant to this section shall have
24 all of the following powers and duties in the order of priority
25 listed in this paragraph, unless the court otherwise permits:

26 (A) To take full and complete control of the substandard
27 property.

28 (B) To manage the substandard building and pay expenses of
29 the operation of the substandard building and real property upon
30 which the building is located, including taxes, insurance, utilities,
31 general maintenance, and debt secured by an interest in the real
32 property.

33 (C) To secure a cost estimate and construction plan from a
34 licensed contractor for the repairs necessary to correct the
35 conditions cited in the notice of violation.

36 (D) To enter into contracts and employ a licensed contractor as
37 necessary to correct the conditions cited in the notice of
38 violation.

39 (E) To collect all rents and income from the substandard
40 building.

1 (F) To use all rents and income from the substandard building
2 to pay for the cost of rehabilitation and repairs determined by the
3 court as necessary to correct the conditions cited in the notice of
4 violation.

5 (G) To borrow funds to pay for repairs necessary to correct the
6 conditions cited in the notice of violation and to borrow funds to
7 pay for any relocation benefits authorized by paragraph (6) and,
8 with court approval, secure that debt and any moneys owed to the
9 receiver for services performed pursuant to this section with a
10 lien on the real property upon which the substandard building is
11 located. The lien shall be recorded in the county recorder's office
12 in the county within which the building is located.

13 (H) To exercise the powers granted to receivers under Section
14 568 of the Code of Civil Procedure.

15 (5) The receiver shall be entitled to the same fees,
16 commissions, and necessary expenses as receivers in actions to
17 foreclose mortgages.

18 (6) If the conditions of the premises or the repair or
19 rehabilitation thereof significantly affect the safe and sanitary use
20 of the substandard building by any tenant, to the extent that the
21 tenant cannot safely reside in his or her unit, then the receiver
22 shall provide relocation benefits in accordance with subparagraph
23 (A) of paragraph (3) of subdivision ~~(d)~~ (e).

24 (7) The relocation compensation provided for in this section
25 shall not preempt any local ordinance that provides for greater
26 relocation assistance.

27 (8) In addition to any reporting required by the court, the
28 receiver shall prepare monthly reports to the state or local
29 enforcement agency which shall contain information on at least
30 the following items:

31 (A) The total amount of rent payments received.

32 (B) Nature and amount of contracts negotiated relative to the
33 operation or repair of the property.

34 (C) Payments made toward the repair of the premises.

35 (D) Progress of necessary repairs.

36 (E) Other payments made relative to the operation of the
37 building.

38 (F) Amount of tenant relocation benefits paid.

39 (9) The receiver shall be discharged when the conditions cited
40 in the notice of violation have been remedied in accordance with

the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) After discharging the receiver, the court may retain jurisdiction for a time period not to exceed 18 consecutive months, and require the owner and the enforcement agency responsible for enforcing Section 17980 to report to the court in accordance with a schedule determined by the court.

(11) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(12) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

~~(13) Nothing in this section shall be construed to~~ *This section does not* limit those rights available to tenants and owners under any other provision of the law.

~~(14) Nothing in this section shall be construed to~~ *This section does not* deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(d) (1) The enforcement agency may seek and the court may order the owner of residential rental property to successfully complete 15 hours of educational courses, seminars, or workshops that are approved by the Department of Real Estate or the enforcement agency. The owner subject to court order under this subdivision shall pay for any expenses related to taking the educational courses, including, but not limited to, any registration fee charged by the course provider. The courses shall include the following:

(A) Not less than a three-hour course in ethics, professional conduct, and legal aspects of ethics in rental property management, which may include, but not be limited to, relevant

1 *legislation, regulations, articles, reports, studies, court decisions,*
2 *and information that relates to rental housing.*

3 *(B) Not less than a three-hour course in fair housing law,*
4 *which shall include, but not be limited to, fair housing law as it*
5 *relates to leasing residential housing.*

6 *(C) Not less than six hours related to residential rental*
7 *property maintenance, which may include, but not be limited to,*
8 *elements of maintenance management, habitability laws,*
9 *avoiding negligence, liability for nuisance and nuisance law,*
10 *identifying and avoiding potential liabilities, property*
11 *inspections, completing maintenance requests, inspecting and*
12 *evaluating a unit upon move-out and move-in, preparing for*
13 *emergency maintenance, preventive maintenance, providing*
14 *quality customer service, and insurance coverage.*

15 *(D) Other courses and programs that will enable an owner*
16 *and his or her agents to achieve a high level of competence in*
17 *serving tenants, including, but not limited to, the teaching of*
18 *techniques that will contribute to improving the landlord-tenant*
19 *relationship, energy conservation techniques, and the owner's*
20 *and his or her agent's knowledge of landlord-tenant law.*

21 *(2) For purposes of this subdivision, "successful completion"*
22 *of a course described in subparagraphs (A) to (D), inclusive, of*
23 *paragraph (1) means to obtain a certificate of completion from*
24 *the provider of the course and, as may be directed by the*
25 *enforcement agency or the court, provide the certificate of*
26 *completion to the enforcement agency or the court.*

27 *(3) This subdivision shall become operative on July 1, 2006.*

28 *(e) If the court finds that a building is in a condition which*
29 *substantially endangers the health and safety of residents*
30 *pursuant to Section 17980.6, upon the entry of any order or*
31 *judgment, the court shall do all of the following:*

32 *(1) Order the owner to pay all reasonable and actual costs of*
33 *the enforcement agency including, but not limited to, inspection*
34 *costs, investigation costs, enforcement costs, attorney fees or*
35 *costs, and all costs of prosecution.*

36 *(2) Order that the local enforcement agency shall provide the*
37 *tenant with notice of the court order or judgment.*

38 *(3) (A) Order that if the owner undertakes repairs or*
39 *rehabilitation as a result of being cited for a notice under this*
40 *chapter, and if the conditions of the premises or the repair or*

1 rehabilitation thereof significantly affect the safe and sanitary use
2 of the premises by any lawful tenant, so that the tenant cannot
3 safely reside in the premises, then the owner shall provide or pay
4 relocation benefits to each lawful tenant. These benefits shall
5 consist of actual reasonable moving and storage costs and
6 relocation compensation. The actual moving and storage costs
7 shall consist of all of the following:

8 (i) Transportation of the tenant's personal property to the new
9 location. The new location shall be in close proximity to the
10 substandard premises, except where relocation to a new location
11 beyond a close proximity is determined by the court to be
12 justified.

13 (ii) Packing, crating, unpacking, and uncrating the tenant's
14 personal property.

15 (iii) Insurance of the tenant's property while in transit.

16 (iv) The reasonable replacement value of property lost, stolen,
17 or damaged (not through the fault or negligence of the displaced
18 person, his or her agent or employee) in the process of moving,
19 where insurance covering the loss, theft, or damage is not
20 reasonably available.

21 (v) The cost of disconnecting, dismantling, removing,
22 reassembling, reconnecting, and reinstalling machinery,
23 equipment, or other personal property of the tenant, including
24 connection charges imposed by utility companies for starting
25 utility service.

26 (B) (i) The relocation compensation shall be an amount equal
27 to the differential between the contract rent and the fair market
28 rental value determined by the federal Department of Housing
29 and Urban Development for a unit of comparable size within the
30 area for the period that the unit is being repaired, not to exceed
31 120 days.

32 (ii) If the court finds that a tenant has been substantially
33 responsible for causing or substantially contributing to the
34 substandard conditions, then the relocation benefits of this
35 section shall not be paid to this tenant. Each other tenant on the
36 premises who has been ordered to relocate due to the substandard
37 conditions and who is not substantially responsible for causing or
38 contributing to the conditions shall be paid these benefits and
39 moving costs at the time that he or she actually relocates.

(4) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he or she has relocated within five days after the relocation.

(5) (A) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A) of paragraph (3), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(B) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(6) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

~~(e)~~

~~(f)~~ The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

~~(f)~~

~~(g)~~ The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

~~(g)~~

~~(h)~~ These remedies shall be in addition to those provided by any other law.

~~(h) Nothing in this section or in Section 17980.6 shall~~

~~(i) This section and Section 17980.6 do not impair the rights of an owner exercising his or her rights established pursuant to~~

Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

~~17980.12. (a) If the owner of residential rental property fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6, the enforcement agency may require the owner and the owner's agents to successfully complete 15 hours of educational courses, seminars, or workshops that are approved by the Department of Real Estate. The courses shall include the following:~~

~~(1) Not less than a three-hour course in ethics, professional conduct, and legal aspects of ethics in rental property management, which may include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, and information that relates to rental housing.~~

~~(2) Not less than a three-hour course in fair housing law, which shall include, but not be limited to, fair housing law as it relates to leasing residential housing.~~

~~(3) Not less than six hours related to residential rental property maintenance, which shall include, but not be limited to, elements of maintenance management, habitability laws, avoiding negligence, liability for nuisance and nuisance law, identifying and avoiding potential liabilities, property inspections, completing maintenance requests, inspecting and evaluating a unit upon move-out and move-in, preparing for emergency maintenance, preventive maintenance, providing quality customer service, and insurance coverage.~~

~~(4) Other courses and programs that will enable an owner and his or her agents to achieve a high level of competence in serving tenants, including, but not limited to, the teaching of techniques that will contribute to improving the landlord-tenant relationship, energy conservation techniques, and the owner's and his or her agent's knowledge of landlord-tenant law.~~

~~(b) For purposes of this section, "successful completion" of a course described in paragraphs (1) to (4), inclusive, of subdivision (a) means to obtain a certificate of completion from the provider of the course and, as may be directed by the enforcement agency, provide the certificate of completion to the enforcement agency.~~

~~(c) This section shall become operative on July 1, 2006.~~

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